Supreme Court, U.S.
FILED

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No. ——— OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1994

LOUIE MORRIS,

Petitioner,

v.

CITY OF HOBART,
A Municipal Corporation,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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March 16, 1995

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QUESTIONS PRESENTED FOR REVIEW

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Do private agreements settling Title VII civil rights claims arise under the federal common law so that such agreements are enforceable in federal court proceedings?

PARTIES

The caption contains all of the parties to the proceedings before the United States District Court of Appeals for the Tenth Circuit and before the United States District Court for the Western District of Oklahoma.

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LOUIE MORRIS,

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CITY OF HOBART,
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Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner, Louie Morris, respectfully prays that a writ of certiorari be issued to review the November 4, 1994, decision of the United States Court of Appeals for the Tenth Circuit and the December 16, 1994, Order denying the petition for rehearing and suggestion for rehearing en banc.

OPINIONS BELOW

The Order entered on December 16, 1995, denying the petition for rehearing and suggestion for rehearing en

banc is reprinted in the appendix hereto. See Appendix Exhibit A.

The Decision entered by the Tenth Circuit on November 4, 1994, is reprinted in the appendix hereto. This decision has reported as *Morris v. City of Hobart*, 39 F.3d 1105 (10th Cir.1994). See Appendix Exhibit B.

The Judgment in the civil case number CIV-91-1287-W, United States District Court of the Western District of Oklahoma, dated February 22, 1993, is reprinted in the appendix hereto. See Appendix Exhibit C.

The Opinion and Order in civil case number CIV-91-1287-W, United States District Court for the Western District of Oklahoma dated October 12, 1992, is reprinted in the appendix hereto. See Appendix Exhibit D.

JURISDICTION

The opinion of the United States Court of Appeals for the Tenth Circuit was entered on November 4, 1994. Petitioner filed a timely petition for rehearing with a suggestion for consideration en banc. On December 16, 1994, the Tenth Circuit denied the petition for rehearing and suggestion for consideration en banc. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) which provides that cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil cases after the rendition of judgment.

FEDERAL STATUTES INVOLVED

The Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. and 42 U.S.C. § 1981 are involved in this case.

Section 2000e-2 provides, in pertinent part, as follows:

> § 2000e-2. Unlawful employment practices
>
> (a) It shall be an unlawful employment practice for any employer –
>
> > (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; . . .

Section 1981 provides, in pertinent part, as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

STATEMENT OF THE CASE

In 1986 the Petitioner, Louie Morris, filed a lawsuit in the Western District of the United States District Courts

of Oklahoma claiming race discrimination. On July 15, 1987, Mr. Morris and City entered into an agreement regarding the essential terms of a settlement of that lawsuit. On July 30, 1987, the trial judge entered an administrative closing order. After voting to approve the form of the settlement document, the City Council sent the document to Mr. Morris who signed the agreement on Sept. 29, 1987.

The settlement agreement provided, in part, that the City would offer Mr. Morris the first job which came open and for which he met the minimum qualifications.

Although the City complied with various portions of the settlement agreement, it breached that portion of the agreement requiring that the City offer Mr. Morris employment. In August of 1991, Mr. Morris filed suit in the original case number seeking enforcement of the settlement agreement. The clerk struck the original case number and issued a new number.

The City moved to dismiss the action for lack of federal question jurisdiction and trial court overruled that motion in reliance on *Snider v. Circle K Corp.*, 923 F.2d 1404 (10th Cir.1991).

The trial court conducted a non-jury trial (again in reliance on *Snider*) and thereupon found in favor of the Petitioner and against the Respondent, City of Hobart.

The City of Hobart appealed asserting, among other matters, a lack of federal question jurisdiction. Petitioner cross-appealed on the trial court's refusal to assess prejudgment interest. Petitioner asserted that federal question jurisdiction was present because the agreement was

to be construed and enforced in accordance with the federal common law – not state law – and that the federal common law was a sufficient basis for federal question jurisdiction.

On November 4, 1994, the Tenth Circuit entered its Opinion on the Appeal finding that private settlement agreements of Title VII and Section 1981 race discrimination suits are governed by state law and that, therefore, there is no federal question jurisdiction. *Morris v. City of Hobart*, 39 F.3d 1105 (10th Cir.1994). The Court of Appeals directed that the District Court vacate its judgment and dismiss the action for lack of jurisdiction. As a consequence of this holding Mr. Morris's appeal was not considered.

Mr. Morris petitioned for reconsideration arguing that the panel decision effectively reversed the prior holding in *Snider v. Circle K Corp.*, 923 F.2d 1404 (10th Cir.1991) which was a result that could only be accomplished by the Court acting en banc. Mr. Morris also asserted that the panel decision was wrongly decided in that private settlement agreements are governed by the federal common law and the federal common law provided an adequate basis for federal court jurisdiction. That petition was denied and this Petition for review by a writ of certiorari is filed within 90 days of the denial of such rehearing.

REASONS FOR GRANTING THE WRIT

There are two distinct and important grounds for granting review pursuant to this writ of certiorari.

FIRST: RESOLUTION OF A CONFLICT BETWEEN THE CIRCUITS:

The Tenth Circuit of the United States Court of Appeals in *Morris v. City of Hobart,* 39 F.3d 1105 (10th Cir.1994) holding that there is no federal question jurisdiction to enforce private settlement of Title VII claims conflicts with the decisions of the Eleventh Circuit in *England v. Kemp,* 976 F.2d 662, 665 (11th Cir.1992) and *Eatmon v. Bristol Steel & Iron Works, Inc.,* 769 F.2d 1503, 1517 (11th Cir.1985) which hold that such agreements are subject to enforcement under the federal question jurisdiction of the courts.

SECOND: THE *MORRIS* DECISION LIKELY CONFLICTS WITH DECISIONS OF THIS COURT:

The Tenth Circuit held that the enforcement of private agreements settling Title VII claims arise under and are governed by state law. *But see Snider v. Circle K Corp.,* 923 F.2d 1404 (10th Cir.1991) and *Fulgence v. J. Ray McDermott & Co.,* 662 F.2d 1206 (5th Cir.1981) (settlement agreements are governed by and construed in accordance with federal common law). In so holding, the Tenth Circuit failed to apply decisions of this Court which hold that:

(a) Private Title VII agreements implicate important federal interests. *Alexander v. Gardner-Denver, Co.,* 415 U.S. 36, 45 (1974) ("the private litigant [in Title VII [not only redresses his own injury but also vindicates the important congressional policy against discriminatory employment practices").

(b) The enforcement of such private Title VII settlement agreements should be determined in accordance

with uniform federal standards rather than the vagarities of state law. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 52 (1974). *Compare Dice v. Akron, C. & Y.R.Co.*, 342 U.S. 359, 361-62, 96 L.Ed. 398, 403 (1952) (FELA releases construed under federal common law).

(c) The presence of the federal common law as providing a basis for the rule or decision is a sufficient basis for federal question jurisdiction. *National Farmers Union Ins. Co. v. Crow Tribe of Indians*, 481 U.S. 845, 850 (1985).

CONCLUSION

Because even private agreements settling claims of discrimination under Title VII implicate important federal interests, such agreements are subject to uniform interpretation under the federal common law. Since the federal common law provides the rule for enforcement and construction of such agreements, federal question jurisdiction would be present for the enforcement of such agreements.

Respectfully submitted this 16th day of March, 1995.

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EXHIBIT "A"

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

LOUIE MORRIS, Plaintiff-Appellee-Cross-Appellant, v. CITY OF HOBART, Defendant-Appellant-Cross-Appellee.	)	Nos. 93-6150 & 93-6184 (Filed Nov 4, 1994)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA
(D.C. No. CIV-91-1287-W)

Eric S. Eissenstat (Greg A. Castro, of Fellers, Snider, Blankenship, Bailey & Tippens, Oklahoma City, Oklahoma, with him on the briefs), of Fellers, Snider, Blankenship, Bailey & Tippens, Oklahoma City, Oklahoma, for the Defendant-Appellant-Cross-Appellee.

Mark Hammons, of Hammons & Associates, Inc., Oklahoma City, Oklahoma, for the Plaintiff-Appellee-Cross-Appellant

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Before **TACHA** and **KELLY** Circuit Judges, and **VRATIL,*** District Judge.

TACHA, Circuit Judge.

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*The Honorable Kathryn H. Vratil, District Judge, United States District Court for the District of Kansas, sitting by designation.

I. Background

In 1986 plaintiff Louie Morris filed suit in federal court against the City of Hobart, alleging that the City had discriminated against him on the basis of race in violation of Title VII of the Civil Rights Act of 1964 (hereinafter the "Title VII lawsuit"). In July 1987, the parties reached a settlement. The trial judge was advised of the settlement and entered an Administrative Closing Order in the court docket.[1] On September 30, 1987, plaintiff filed a document entitled "Dismissal with Prejudice" with the clerk of the court; the clerk filed this document in the court docket on the same day.

On August 15, 1991 plaintiff again filed suit against defendant in federal court, claiming that defendant breached the settlement agreement. The district court found for plaintiff and entered judgment in the amount of $12,502.72. Defendant appeals, claiming that the district

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[1] The order reads:

> It appearing that these proceedings are held in abeyance pursuant to the settlement and compromise affected [sic] by the parties,
>
> IT IS ORDERED that the clerk Administratively terminate this action in his records without prejudice to the rights of the parties to reopen the proceedings for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation. If within 60 days hereof, the parties have not reopened for the purpose of obtaining such a final determination, the action will be deemed dismissed with prejudice.
>
> IT IS SO ORDERED this 30th day of July, 1987.

The order further states that it was entered in the Judgment Docket on July 30, 1987.

court lacked jurisdiction and that the court erred on the merits of its decision. Plaintiff cross appeals the district court's refusal to award him prejudgment interest. Because we conclude that the district court lacked subject matter jurisdiction to enforce the settlement agreement, we dismiss the case and do not address the merits of the appeal or cross appeal.

II. Preliminary Issues

When plaintiff filed this second action to enforce the settlement agreement, defendant moved to dismiss for lack of subject matter jurisdiction. The district court denied the motion, and defendant renews its jurisdictional objections on appeal. We review a challenge to subject matter jurisdiction de novo. *Redmon v. United States*, 934 F.2d 1151, 1155 (10th Cir. 1991).

The district court found that it had subject matter jurisdiction over this dispute pursuant to our decision in *Snider v. Circle K Corp.*, 923 F.2d 1404 (10th Cir. 1991). In addition to agreeing with the district court's holding in this regard, plaintiff asserts an alternative basis for federal court jurisdiction. Specifically, plaintiff alleges that the Title VII lawsuit was never effectively dismissed, so that the lawsuit remained pending at the time plaintiff filed suit to enforce the settlement agreement. Because the district court retained jurisdiction over the Title VII lawsuit, plaintiff argues that it also had jurisdiction to enforce the settlement agreement. We first address plaintiff's assertion that the original Title VII lawsuit was never dismissed. Finding that the Title VII lawsuit was dismissed, we then address whether the district court had

ancillary jurisdiction or an independent basis for subject matter jurisdiction.

III. Disposition of Title VII Lawsuit

Plaintiff first asserts that the district court has jurisdiction over the settlement agreement because the Title VII lawsuit was never dismissed. So long as a case is pending, he argues, the district court retains the power to enforce such a settlement agreement. We need not address the merits of plaintiff's contention, however, because we conclude that the Title VII lawsuit was dismissed.

Dismissals of lawsuits are governed by Rule 41 of the Federal Rules of Civil Procedure. Rule 41(a) provides two ways for a plaintiff to dismiss a case voluntarily after the defendant has filed an answer or a motion for summary judgment. The first method requires the filing of a stipulation of dismissal signed by all parties who have appeared in the action. Fed. R. Civ. P. 41(a)(1)(ii). This method normally is used when the parties have reached a settlement of the suit. In this case, although the parties reached a settlement on July 15, 1987, no written stipulation of dismissal signed by all parties was ever filed. Although, under certain circumstances, an oral stipulation by the parties in court may satisfy the requirements of Rule 41(a)(1)(ii),[2] in this case the record is not clear enough for us to find that the Title VII lawsuit was dismissed pursuant to an oral stipulation by the parties in

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[2] *See, e.g., Pipeliners Local Union No. 798 v. Ellerd*, 503 F.2d 1193, 1199 (10th Cir. 1974).

court. The document that plaintiff filed on September 30, 1987 – entitled "Dismissal with Prejudice" – was not a Rule 41(a)(1)(ii) stipulation because it was signed only by plaintiff. Thus, the Title VII lawsuit was not dismissed in accordance with the requirements of Rule 41(a)(1)(ii).

The second method of dismissal under Rule 41(a) allows the court to dismiss the case at the plaintiff's instance, upon such terms and conditions as the court deems proper. Fed. R. Civ. P. 41(a)(2). Rule 41(a)(2) does not require that the plaintiff's request for dismissal take any specific form; it requires only that the court approve such a request for dismissal. *See United Steelworkers v. Libby, McNeill & Libby, Inc.*, 895 F.2d 421, 422 n.1 (7th Cir. 1990) (finding that dismissal was pursuant to Rule 41(a)(2) because of the "circumstances surrounding the dismissal"); *see also McCall-Bey v. Franzen*, 777 F.2d 1178, 1185 (7th Cir. 1985) (case dismissed pursuant to Rule 41(a)(2) although the district court made no reference to it in its order of dismissal).

There is no dispute in the instant case that the parties agreed to a settlement on July 15, 1987, and that the district court was informed of the settlement. After being advised of the settlement, the district court used an administrative closing order to clear the case from its docket. This court has recognized that an administrative closing order, worded similarly to the order here, "by its own terms matured into a dismissal." *Lewis v. B.F. Goodrich*, 850 F.2d 641, 643 (10th Cir. 1988) (en banc). *Lewis* did not interpret Rule 41; the issue in *Lewis* was whether we had jurisdiction to consider an appeal of a summary judgment order. *Id.* at 642.

A summary judgment order that is not a final decision is not appealable. *See* 28 U.S.C. § 1291. The defendant in *Lewis* appealed a partial summary judgment without having the issue certified for appeal pursuant to Rule 54(b). When the district court subsequently disposed of the remainder of the case with an administrative closing order, the appellant failed to refile a notice of appeal. We nevertheless held that a prematurely filed appeal should not be dismissed for lack of jurisdiction so long as either the appellant subsequently obtains a Rule 54(b) certification or there is a final disposition of the entire case. *Id.* at 645-46. Because the administrative closing order served as the final disposition in *Lewis*, we exercised jurisdiction to hear appellant's claim.

Although *Lewis* did not address whether such an administrative closing order complies with Rule 41(a), the decision implicitly recognized the usefulness of administrative closing orders to district courts with busy dockets. Furthermore, we expressly construed the administrative closing order in *Lewis* as becoming a final judgment sixty days after it was filed. *Id.* at 643 n.2.

We conclude that, under the circumstances of this case, the district court dismissed the Title VII lawsuit in accordance with Rule 41(a)(2). The district court was informed that the parties had settled the case; neither party suggests that the court was misinformed regarding the parties' intentions to discontinue the litigation. The Administrative Closing Order entered by the district court on July 30, 1987, dismissed the case and allowed the parties sixty days to reopen the litigation. Both parties clearly had notice of the consequences of the Administrative Closing Order, and neither party notified the court of

difficulties in finalizing the settlement. Moreover, by filing his "Dismissal with Prejudice," plaintiff advised the court that the matter was concluded. We therefore hold that an administrative closing order that notifies the parties that the case will be dismissed with prejudice absent action on their part within a specified period of time is sufficient to terminate a case.

Plaintiff next argues that the Title VII lawsuit was not effectively dismissed because the district court did not comply with Fed. R. Civ. P. 58. Even were we to agree that Rule 58 affects the dismissal, plaintiff's argument fails. Rule 58 requires that the Clerk enter a separate document to evidence a final judgment. The purpose of Rule 58 is to clarify the date on which judgment was entered. *Hull v. United States*, 971 F.2d 1499, 1508 (10th Cir. 1992) ("[T]he drafters of Rule 58 intended to clarify the time that judgment was entered."), *cert. denied*, 113 S. Ct. 1844 (1993). Thus, Rule 58's basic purpose is to set a definite date from which an appeal may be taken. *See Bankers Trust Co. v. Mallis*, 435 U.S. 381, 384 (1978) ("The sole purpose of the separate-document requirement . . . is to clarify when the time for appeal under 28 U.S.C. § 2107 begins to run."). Here, the Administrative Closing Order gave the parties sixty days to reopen the proceedings. As we noted in *Lewis*, such an order "by its own terms [can]mature[] into a dismissal . . . creating an *appealable final judgment*." *Lewis*, 850 F.2d at 642-43 (emphasis added). We therefore conclude that an administrative closing order, such as that utilized by the district court in this case, matures into final judgment and, if no action is taken to resolve the case, satisfies the separate document requirement of Rule

58. As a result, we conclude that Rule 58 does not preclude the use of the Administrative Closing Order as a dismissal of the Title VII lawsuit.

IV. Subject Matter Jurisdiction

Because we hold the Title VII lawsuit was dismissed pursuant to Rule 41(a)(2), we must analyze other potential bases for subject matter jurisdiction. The district court concluded that it had subject matter jurisdiction pursuant to *Snider v. Circle K Corp.*, 923 F.2d 1404 (10th Cir. 1991), stating that the "settlement agreement in the case at bar involved Title VII race discrimination. Accordingly the Court continues to have ancillary jurisdiction to enforce such agreement." We first address whether the district court had ancillary jurisdiction to enforce the settlement agreement, and then we examine whether an independent basis for federal subject matter jurisdiction exists.

A. Ancillary Jurisdiction

The United States Supreme Court recently considered the jurisdiction of district courts to enforce settlement agreements in dismissed cases. *Kokkonen v. Guardian Life Ins. Co. of America*, 114 S. Ct. 1673 (1994). The Court held that, once the parties to a lawsuit have settled and the district court has dismissed the case, the district court does not have ancillary jurisdiction to enforce the parties' settlement agreement. *Id.* at 1677. A district court can, however, retain jurisdiction over a settlement agreement if the order of dismissal shows an intent to retain jurisdiction or incorporates the settlement agreement. *Id.*

Here, the district court did not employ either of the alternatives recognized by *Kokkonen* to retain jurisdiction over the settlement agreement. First, the language of the Administrative Closing Order makes clear the district court's intent to dismiss the case without retaining jurisdiction upon expiration of sixty days; the court clearly did not condition the dismissal on compliance with the settlement agreement. Second, the court's order of dismissal did not incorporate the settlement agreement. Like the appellant in *Kokkonen*, what plaintiff "seeks in this case is enforcement of the settlement agreement, and not merely reopening of the dismissed suit." *Id.* at 1675. Without reservation by the court, ancillary jurisdiction is unavailable to enforce a settlement agreement; there must be an independent basis for federal jurisdiction. *Id.* at 1677.

B. Independent Basis for Federal Question Jurisdiction

Federal courts are courts of limited jurisdiction; they must have a statutory basis for their jurisdiction. *Castaneda v. INS*, 23 F.3d 1576, 1580 (10th Cir. 1994). In the instant case, the parties are not diverse. Therefore, if federal subject matter jurisdiction exists, it must arise under a law of the United States. *See* 28 U.S.C. § 1331. A case arises under federal law if its "well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983). Thus, a district court may exercise jurisdiction when the cause of action is created

by federal law or turns on a substantial question of federal law.

Plaintiff does not claim that his cause of action is created by federal law. As in *Kokkonen*, "[t]his suit involves a claim for breach of a contract, part of the consideration for which was dismissal of an earlier federal suit. No federal statute makes that connection (if it constitutionally could) the basis for federal-court jurisdiction over the contract dispute." *Kokkonen*, 114 S. Ct. at 1677; *see also Lucille v. City of Chicago*, 31 F.3d 546, 548 (7th Cir. 1994) (dismissing the contention that "just because the initial suit sought to vindicate a federal right, the court possesses federal-question jurisdiction to construe and enforce a contract ending litigation").[3] Consequently, federal jurisdiction will lie only if resolution of this breach of contract claim requires resolution of a substantial question of federal law.

In *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921), the Supreme Court held that federal jurisdiction can be found in state-law created causes of action if the right to relief turns on the construction of a federal law. *Id.* at 199-200. Nevertheless, the "mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction." *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 813 (1986). When making the determination of whether a nonfederal

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[3] *But see Fleming v. U.S. Postal Serv.*, 27 F.3d 259, 260 (7th Cir. 1994) (stating in dicta that it remains unsettled in the Seventh Circuit whether a dispute over the settlement of a federal case arises under state or federal law), *petition for cert. filed* (U.S. Sept. 14, 1994) (No. 94-6064).

claim turns on a substantial question of federal law, courts should exercise "prudence and restraint." *Id.* at 810. Restraint is necessary because "determinations about federal jurisdiction require sensitive judgments about congressional intent, judicial power, and the federal system." *Id.*

A court examining whether a case turns on a question of federal law should focus on whether Congress evidenced an intent to provide a federal forum *Id.* at 812. Turning to Title VII, we find no suggestion that Congress intended to confer federal question jurisdiction over contract disputes arising out of private settlements.[4] *See Langley v. Jackson State Univ.*, 14 F.3d 1070, 1073 (5th Cir. 1994) ("[W]e cannot find[] any indication that Congress has established an administrative structure evidencing its

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[4] A number of courts have held that suits involving the breach of conciliation agreements and predetermination settlement agreements negotiated by the Equal Employment Opportunity Commission are "brought under" Title VII. *See Brewer v. Muscle Shoals Bd. of Educ.*, 790 F.2d 1515 (11th Cir. 1986); *Eatmon v. Bristol Steel & Iron Works, Inc.*, 769 F.2d 1503 (11th Cir. 1985); *EEOC v. Henry Beck Co.*, 729 F.2d 301 (4th Cir. 1984); *EEOC v. Safeway Stores, Inc.*, 714 F.2d 567 (5th Cir. 1983), *cert. denied*, 467 U.S. 1204 (1984); *EEOC v. Liberty Trucking Co.*, 695 F.2d 1038 (7th Cir. 1982). These courts reasoned that the elaborate statutory scheme under which these agreements were reached illustrates congressional intent to include enforcement of these agreements under section 2000e-5(f)(3). *See* 42 U.S.C. §§ 20003-5(a) through (e) (for evidence of detail regarding conciliation agreements); *see also Eatmon*, 769 F.2d at 1508-12; *Henry Beck Co.*, 729 F.2d at 303-05; *Safeway*, 714 F.2d at 571-73; *Liberty Trucking*, 695 F.2d at 1041-43. Without adopting the reasoning of these decisions, we find that settlement contracts between private parties do not implicate the same degree of congressional concern.

intent to provide a federal forum for private parties to enforce settlement agreements ending discrimination disputes after a lawsuit has been filed."), *cert. denied*, No. 93-1832, 1994 WL 210029 (U.S. Oct. 3, 1994). The jurisdictional grant embodied in Title VII states only that federal courts have jurisdiction over actions "brought under" Title VII. 42 U.S.C. § 2000e-5(f)(3).[5] This case was brought under state contract law, not Title VII.

Our determination of whether subject matter jurisdiction exists also requires us to consider principles of federalism. We hesitate to exercise jurisdiction where the "cause of action is a subject traditionally relegated to state law." *Merrell Dow*, 478 U.S. at 811. Because contract actions are traditionally reserved for state courts to resolve, federalism concerns also militate against our exercise of jurisdiction here.

Finally, plaintiff asserts that a substantial question of federal law is at stake in this action because federal

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[5] Plaintiff argues that our decision in *Snider v. Circle K Corp.*, 923 F.2d 1404 (10th Cir. 1991), supports his contention that the district court had an independent basis for subject matter jurisdiction. We remarked in *Snider* that "a number of courts have concluded that federal courts have jurisdiction over actions brought to enforce Title VII settlement agreements because such actions are 'actions brought under' Title VII." *Id.*

Snider, however, did not purport to decide the question of subject matter jurisdiction. Rather, the issue in that case was whether the plaintiff was entitled to a jury trial on her claim that the defendant breached their settlement agreement. We therefore had no occasion to examine the judicial considerations implicated in questions of federal subject matter jurisdiction. We therefore examine the jurisdictional issue in this case without reference to *Snider*.

common law[6] governs the interpretation of agreements settling civil rights litigation. Plaintiff relies on *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), for the proposition that federal common law governs agreements settling Title VII lawsuits. We do not read *Alexander* so broadly. The *Alexander* court merely stated that "[i]n determining the effectiveness of [a waiver of a plaintiff's right to sue under Title VII], a court would have to determine at the outset that the employee's consent to the settlement was voluntary and knowing." *Id.* at 52 n.15. Quite simply, nothing in *Alexander* could be construed as holding that federal common law governs plaintiff's claim.

V. Conclusion

We hold that, because an action for breach of contract arising out of the private settlement of a Title VII claim does not arise under federal law, the district court lacked subject matter jurisdiction to enforce the parties' settlement agreement. Accordingly, we remand the case to the district court with instructions to vacate the judgment and **DISMISS** the case for lack of subject matter jurisdiction.

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[6] Plaintiff correctly states that federal question jurisdiction can be founded on federal common law as well as statutory law. *National Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845, 850 (1985). Plaintiff's claim is for breach of contract, an action created by state law, not federal common law.

EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

LOUIE MORRIS, Plaintiff, vs. CITY OF HOBART, a Municipal Corporation, Defendant.	)	No. CIV-91-1287-W (Filed Feb. 22, 1993)

JUDGMENT

This action came on for trial before the Court, Honorable Lee R. West, District Judge, presiding, and the issues have been duly tried and the decision has been duly rendered.

IT IS ORDERED AND ADJUDGED that the Plaintiff, Louie Morris, recover of the Defendant, City of Hobart, the sum of Twelve Thousand Five Hundred and Two Dollars and Seventy-two Cents ($12,502.72) with interest thereon at the rate as provided by law, and his costs of action.

DATED at Oklahoma City, Oklahoma, this 22nd day of February, 1993.

/s/ Lee R. West
LEE R. WEST
UNITED STATES
DISTRICT JUDGE

ENTERED IN JUDGMENT
DOCKET ON 2-22-93

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

LOUIE MORRIS, Plaintiff,	)	
vs.	)	No. CIV-91-1287-W
CITY OF HOBART, a Municipal Corporation, Defendant.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed Oct. 19, 1993)

This matter came on for trial, the Honorable Lee R. West, presiding, and the issues having been duly heard, the Court issues its Findings of Fact and Conclusions of Law as stated below.

Findings of Fact

1. Louie Morris is a black male residing in Hobart, Kiowa County, Oklahoma.

2. The Defendant is a municipal corporation and is located in Kiowa County, Oklahoma.

3. On approximately July 15, 1987, the parties individually and through their lawfully appointed agents entered into a voluntary release and settlement agreement. It appears that a written release and settlement agreement was executed on or about October 7, 1987. Nevertheless, the Court finds that the release and settlement agreement was binding on and from July 15, 1987.

4. Such settlement agreement arose out of a Title VII race discrimination action which was pending in the United States District Court for the Western District of Oklahoma, entitled *Louie Morris v. City of Hobart, et al.*, Case No. CIV-86-2613-W. Said lawsuit was dismissed on or about September 30, 1987.

5. In consideration for settlement of the lawsuit, the release and settlement agreement agreed to three basic elements:

(a) To pay Mr. Morris a sum of money which has been paid;

(b) Employ Mr. Morris in the first available City position for which he was qualified; and

(c) Employ Mr. Morris in the first available police position subject to his satisfactorily completing a Minnesota Multi-Phasic Personality Inventory exam (MMPI).

6. The City of Hobart filled the position of truck-driver for the sanitation department and subsequently a landfill operator on or about November 13, 1987. Hiring for said position was completed by September 22, 1987. Thus, the City of Hobart filled this City position for which Mr. Morris was qualified for employment subsequent to an agreement to settle the lawsuit.

7. In January 1989, the City of Hobart offered to employ Louie Morris as a police officer, subject to his satisfactorily completing the MMPI.

8. Louie Morris notified the Chief of Police that he wished to accept the offer of the position of patrol officer, and he subsequently took the MMPI.

9. Upon evidence presented to the Court, the Court finds that the results of Morris' MMPI were unsatisfactory pursuant to the release and settlement agreement, thus releasing and exonerating the City of Hobart from any obligation to hire Morris as a police officer.

10. The landfill operator's position was no longer maintained by the City of Hobart after February 27, 1990.

Conclusions of Law

1. This Court has subject matter jurisdiction pursuant to *Snyder v. Circle K Corp.*, 923 F.2d 1404 (10th Cir. 1991). The settlement agreement in the case at bar involved Title VII race discrimination. Accordingly the Court continues to have ancillary jurisdiction to enforce such agreement.

2. The Court finds that pursuant to the agreement between the parties, Mr. Morris did not satisfactorily complete the MMPI.

3. The Court finds that pursuant to the agreement, the City of Hobart failed to honor and therefore breached the agreement regarding the position of truck driver for the Department of Sanitation and the landfill operator.

4. The Court finds that Mr. Morris sustained damages in the amount of that which could have been earned in the truck driver's position and later the landfill operator's position from November 13, 1987 until February 27, 1990, less the amount of money earned by Louie Morris during that time period.

5. The parties are directed to present the calculated amount of damages so that the Court may enter judgment regarding said amount.

ENTERED this 19th day of October, 1992.

/s/ Lee R. West
LEE R. WEST
UNITED STATES
DISTRICT JUDGE

EXHIBIT "D"

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LOUIE MORRIS, Plaintiff-Appellee, Cross-Appellant, v. CITY OF HOBART, a municipal corporation, Defendant-Appellant, Cross-Appellee.	)	Nos. 93-6150 93-6184 (D.C. #CIV-91-1287-W)

ORDER
Entered December 16, 1994

Before TACHA and KELLY, Circuit Judges, and VRATIL*, District Judge.

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*The Honorable Kathryn H. Vratil of the United States District Court for the District of Kansas, sitting by designation.

This matter comes on for consideration of Appellee/Cross-Appellant Louie Morris' petition for rehearing and suggestion for rehearing in [sic] banc.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision.

In accordance with Rule 35(b), Federal Rules of Appellate Procedure, the suggestion for rehearing in [sic]

banc was transmitted to all of the judges of the court who are in regular active service. No member of the panel and no judge in regular active service on the court having requested that the court be polled on rehearing in [sic] banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing in [sic] banc is denied.

Entered for the Court

PATRICK FISHER, Clerk

/s/ Opal A. Carter
ByOpal A. Carter
Deputy Clerk

Supreme Court, U.S.
FILED
APR 14 1995
OFFICE OF THE CLERK

No. 94-1539

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1994

LOUIE MORRIS,

Petitioner,

V.

CITY OF HOBART,
A Municipal Corportion,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Court should exercise its extraordinary supervision to review a federal appellate court holding that there is no federal question jurisdiction in a case involving a private contract between non-diverse parties which is governed by state law.

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

FEDERAL STATUTES INVOLVED

Respondent disagrees with Petitioner that 42 U.S.C. § 2000e *et seq.* and 42 U.S.C. § 1981 are the controlling feder-

al statutes involved in this case. The controlling federal statute is 28 U.S.C. § 1331 which provides:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

SUMMARY OF ARGUMENT [1]

The United States Court of Appeals for the Tenth Circuit properly found that the district court lacked subject matter jurisdiction. This case involved a dispute between two parties of the same state concerning the interpretation of a private contract. Petitioner sought enforcement of the contract freely and voluntarily negotiated between himself and the City of Hobart. Thus, the claim did not arise "under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331, did not depend on the interpretation of federal law, nor was its outcome dependent on the interpretation of the United States Constitution. As such, Petitioner fails to identify any special or important reason for this Court to accept certiorari.

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[1] Because this case focuses solely on whether there was subject matter jurisdiction in the district court, Respondent will ignore the mischaracterization of the case as recited in Petitioner's Statement of the Case. Respondent does note, however, that the Order denying the petition for rehearing and suggestion for rehearing in banc was entered on December 16, 1994, and not December 16, 1995; and that the Opinion and Order of the district court was filed on October 19, 1992, and not October 19, 1993, as recited in Petitioner's Appendix, nor October 12, 1992, as asserted by Petitioner.

ARGUMENT

I.

THERE IS NO CONFLICT BETWEEN THE CIRCUITS

The decision by the United States Court of Appeals for the Tenth Circuit does not conflict with any other circuit's decision, including those identified in the Petition, *i.e.*, England v. Kemp, 976 F.2d 662 (11th Cir. 1992) or Eatmon v. Bristol Steel & Iron Works, Inc., 769 F.2d 1503 (11th Cir. 1985). The decisions in Eatmon and England are factually and legally distinguishable from the present case.

The Eleventh Circuit held in Eatmon, that an action to enforce a pre-litigation conciliation agreement entered into by the EEOC, the employer and the aggrieved employee was an action "brought under" Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq*. The panel in England adopted the Eatmon case in holding that the district court had subject matter jurisdiction to entertain an employee's claim of sex discrimination in violation of a consent decree where (1) the employee was a member of the class who had settled the claim and was thus a party to the consent order, (2) the district court had expressly reserved authorization to enforce the consent order, and (3) the district court had dismissed the suit after entry of the decree which included a dismissal with prejudice of all class members' claims that existed prior to the decree's approval.

The England and Eatmon cases are not on point. Neither England nor Eatmon address nor discuss the issue of

whether a federal court has jurisdiction to enforce a settlement agreement after the plaintiff has dismissed with prejudice the underlying lawsuit. Every case cited by the England and Eatmon courts in support of their respective decisions is either a case in which there was a conciliation agreement, *i.e.*, a "Title VII agreement" rather than a settlement and dismissal of the lawsuit; or, the motion to enforce the settlement agreement was filed before dismissal of the case while the action was pending.

Unlike an action to enforce a conciliation agreement, an action to enforce a settlement agreement arising out of federal litigation which has been dismissed is governed by state law. A dispute between residents of the same state over the meaning of their contract is traditionally, uncontroversially and exclusively within the jurisdiction of state courts. McCall-Bey v. Franzen, 777 F.2d 1178 (7th Cir. 1985); Fairfax Countywide Citizens Ass'n v. Fairfax County, Va., 571 F.2d 1299, 1303 (4th Cir.), *cert. denied*, 439 U.S. 1047 (1978). Although some breach of contract actions are within federal jurisdiction, every circuit court has ruled that a contract dispute between citizens of the same state that arises under state rather than federal law is not within federal jurisdiction, even though the contract was made in settlement of a federal question suit. See Fairfax, *supra*; McCall, *supra*; Sawka v. Healtheast, Inc., 989 F.2d 138, 141 (3rd Cir. 1993); Lucille v. City of Chicago, 31 F.3d 546, 548 (7th Cir. 1994), *cert. denied*, 115 S.Ct. 1109 (1995) (dismissing the contention that "just because the initial suit sought to vindicate a federal right, the court possesses federal-question jurisdiction under 28 U.S.C. § 1331 to construe and enforce a contract ending the litigation."); Langley v. Jackson State Univ., 14 F.3d 1070, 1073 (5th Cir.), *cert. denied*, 115 S.Ct. 61 (1994)

("[W]e cannot find ... any indication that Congress has established an administrative structure evidencing its intent to provide a federal forum for private parties to enforce settlement agreements ending discrimination disputes after a lawsuit has been filed.").

There is no conflict between the circuits. The Third, Fourth, Fifth and Seventh Circuits have each resolved the issue in this case consistently with the Tenth Circuit decision. No circuit court has ruled to the contrary. This Court has previously denied certiorari in a case presenting the identical issues, see, *e.g.*, Langley, and there is no special or important reason to grant certiorari in this case.

II.

THE TENTH CIRCUIT'S DECISION IS CONSISTENT WITH DECISIONS OF THIS COURT

Petitioner's assertion that the Tenth Circuit's holding that state law provides the rule of decision conflicts with decisions of this Court is also without merit. "A circuit court, ... is of limited jurisdiction ... [a]nd the fair presumption is (not as with regard to a court of general jurisdiction, that a cause is within its jurisdiction unless the contrary appears, but rather) that a cause is without its jurisdiction, until the contrary appears.'" Turner v. Bank of North America, 4 U.S. 8, 10 (1799). The burden of established jurisdiction is on the party claiming it. McNutt v. General Motors Acceptance Corp. of Indiana, 298 U.S. 178, 182-83 (1936).

In the instant action, Petitioner sought enforcement of a contract freely and voluntarily negotiated between himself

and the City of Hobart. The claim did not arise, therefore, "under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. A case "arises under" the Constitution or the laws of the United States when its decision depends upon the interpretation of the Constitution or federal law. It is only when the action may be defeated by one construction of the law and sustained by another construction or federal law that such jurisdiction exists. The right asserted on which federal question depends must be an essential element of the Petitioner's claim. See, *e.g.*, Phillips Petroleum Co. v. Texaco, Inc., 415 U.S. 125, 127 (1974) (*per curiam*).

The settlement agreement between Petitioner and the City of Hobart, while serving to terminate litigation of a federal claim, was a private contract entered into after private negotiations between private parties. Both its validity and the interpretation of its terms are governed by Oklahoma law. The decision regarding Petitioner's claim did not depend upon the interpretation of federal law nor was its outcome dependent on the interpretation of the Constitution. The parties were citizens of the same state and the matter in controversy did not exceed $50,000. 28 U.S.C. § 1332. There was no special statutory grant of jurisdiction empowering the district court to take cognizance over a simple contract dispute. Once the unqualified dismissal with prejudice was filed, the action at its merits was at an end.

Indeed, the Petition can be disposed of by reference to this Court's recent decision of Kokkonen v. Guardian Life Ins. Co. of America, 114 S.Ct. 1673 (1994). In Kokkonen, the Court held that once the parties to a lawsuit have settled and the district court has dismissed the case, the district court does not have ancillary jurisdiction to enforce the parties'

settlement agreement. *Id.* at 1677. A district court can, however, retain jurisdiction over a settlement agreement if the order of dismissal shows an intent to retain jurisdiction or incorporates the settlement agreement. *Id.*

Here, the district court did not employ either of the two alternatives recognized by Kokkonen to retain jurisdiction over the settlement agreement. Moreover, the Petitioner did not claim that his cause of action was created by federal law. As in Kokkonen, "[t]he suit involves a claim for breach of a contract, part of the consideration for which was dismissal of an earlier federal suit. No federal statute makes that connection (if it constitutionally could) the basis for federal-court jurisdiction over the contract dispute." Kokkonen, 114 S.Ct. at 1677.

Thus, Petitioner's assertion that this Court's decision in Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974) requires federal common law to be applied in the settlement of a private state law contract dispute which has as part of its consideration the dismissal of a Title VII claim is totally without merit and has been rejected by every circuit court which has faced the issue. As the Tenth Circuit observed, "[t]he Alexander court merely stated that '[i]n determining the effectiveness of [a waiver of a plaintiff's right to sue under Title VII], a court would have to determine at the outset that the employee's consent to the settlement was voluntary and knowing.' (Citation omitted.) Quite simply, nothing in Alexander could be construed as holding that federal common law governs plaintiff's claim." Morris v. City of Hobart, 39 F.3d 1105, 1112 (10th Cir. 1994).

Thus, although Petitioner correctly states that federal question jurisdiction can be founded on federal common law as well as statutory law, see, *e.g.*, National Farmers Union Ins. Companies v. Crow Tribe of Indians, 471 U.S. 845, 850 (1985),[2] Petitioner's claim was for breach of contract, an action created by state law, not federal common law.

CONCLUSION

This case presents no issue appropriate for this Court's review. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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[2] Erroneously cited in Petitioner's Petition as 481 U.S. 845, 850 (1985).